



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

MEMORANDUM

SUBJECT: Consultation Requirements under the Endangered Species Act for State and Tribal Clean Water Act Section 404 Program Approvals

FROM: David P. Ross DAVID
Assistant Administrator ROSS

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ROSS
Date: 2020.08.27
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TO: Regional Administrators, Regions 1-10

Please find attached a memorandum titled “Endangered Species Act Section 7(a)(2) Consultation for State and Tribal Clean Water Act Section 404 Program Approvals.” The U.S. Environmental Protection Agency (EPA or Agency) views consultation under Endangered Species Act (ESA) Section 7 as required when EPA is considering approval of a state or tribe’s request to assume administration of the Clean Water Act (CWA) Section 404 program and EPA determines that the approval may affect an ESA-listed species or designated critical habitat. ESA Section 7 directs each federal agency to ensure, in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, that “any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of” listed species or result in the destruction or adverse modification of designated critical habitat. 16 U.S.C. 1536(a)(2).

EPA has finalized its position following the consideration of comments received in response to the Agency’s *Federal Register* notice “Request for Comment on Whether EPA’s Approval of a Clean Water Act Section 404 Program Is Nondiscretionary for Purposes of Endangered Species Act Section 7 Consultation” (Docket ID No. EPA-HQ-OW-2020-0008). This determination does not modify or alter the application of the ESA to other EPA or federal agency actions. The attached memorandum will be posted on EPA’s website at <https://www.epa.gov/cwa404g>.

As articulated in my memorandum to Region 4 Administrator Mary Walker (attached), EPA is initiating ESA Section 7 formal consultation during the Agency’s review of the State of Florida’s request received on August 20, 2020, to assume administration of a CWA Section 404 program because we have determined that EPA’s potential approval of Florida’s application may affect listed species or designated critical habitat.

If you have any questions, please reach out to me or have your staff contact Kathy Hurld at (202) 566-1269 or at hurld.kathy@epa.gov.

Attachments (2):

1. Memorandum on Endangered Species Act Section 7(a)(2) Consultation for State and Tribal Clean Water Act Section 404 Program Approvals
2. Transmittal Memorandum from David P. Ross to Mary S. Walker on Consultation Requirements under the Endangered Species Act for State and Tribal Clean Water Action Section 404 Program Approvals